

## DOCKET FILE COPY ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Revision of the Commission's Rules ) CC Docket No. 94-102  
to Ensure Compatibility with Enhanced )  
911 Emergency Calling Systems )

To: The Commission

REPLY COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA") submits these Reply Comments in the captioned proceeding<sup>1</sup> in response to the Wireless Telecommunications Bureau's Public Notice seeking comment on a Request for an Emergency Declaratory Ruling ("California Request") filed by the State of California 9-1-1 Program Manager.<sup>2</sup> RCA is an association composed of telecommunications companies providing cellular service to rural America. RCA members operate more than eighty licensed cellular service areas across the country, making service available to more than 6.5 million people. Throughout this proceeding, RCA and other carriers have documented the integral role that cost recovery plays in the provision of E911 services.<sup>3</sup> RCA submits that the issues raised by the Request regarding

---

<sup>1/</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996) ("E911 Report and Order"), Memorandum Opinion and Order, 12 FCC Rcd 22665 (1997) ("E911 Memorandum Opinion and Order").

<sup>2/</sup> Public Notice, CC Docket No. 94-102, DA 98-1504, released July 30, 1998.

<sup>3/</sup> See, e.g., Comments of the Rural Cellular Association at 12, filed January 9, 1995; Reply Comments at 5, filed March 17, 1995; (additional) Comments at 6, filed March 4, 1996; Comments of the Rural Cellular Association at 6, filed December 15, 1995 (in response to Petition for Rulemaking of the Ad Hoc Alliance for Public Access to 911).

of Tele. Rec'd  
Ct 1  
FCC DE

limitation of liability and cost recovery (which echo pending requests)<sup>4</sup> warrant immediate action by the Bureau to ensure the deployment of wireless enhanced 911 services ("E911"), as mandated.<sup>5</sup> In support thereof, RCA shows the following:

I. The Commission Should Adopt Federal Liability Protection For Wireless Carriers Deploying E911 Services

The Commission's Rules require that wireless carriers provide E911 service without customer validation.<sup>6</sup> As a result of this mandate to provide service to subscribers and non-subscribers alike, carriers must be afforded adequate liability protection. The California Request states that "the issue of immunity from liability is now the only substantive obstacle preventing trials and commercial deployment of wireless E9-1-1 service."<sup>7</sup> RCA concurs with commenters that limitation of carrier liability is necessary for the provision of E911 service, and supports expedited adoption of Federal liability protection.<sup>8</sup>

---

<sup>4/</sup> See e.g., Petition for Reconsideration and Clarification of the Cellular Telecommunications Industry Association ("CTIA"), filed February 17, 1998.

<sup>5/</sup> Under the Commission's E911 Phase I requirement, as of April 1, 1998, covered carriers must provide the telephone number of the 911 caller and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point ("PSAP") through the use of Automatic Number Identification ("ANI") and Pseudo-ANI. 47 C.F.R. §20.18(d) (1997).

<sup>6/</sup> E911 Order at ¶¶13-15. 47 C.F.R. §20.18(d) (1997).

<sup>7/</sup> California Request at 1.

<sup>8/</sup> See, e.g., Comments of CTIA at 3; Comments of Personal Communications Industry Association ("PCIA") at 3; Comments of Ameritech at 3-4; Comments of BellSouth Corporation ("BellSouth") at 4-5; Comments of GTE at 3; Further Comments of Bell Atlantic Mobile, Inc. ("Bell Atlantic Mobile") at 2; Comments of SBC Wireless, Inc. ("SBC") at 3; Comments of AT&T Wireless Services, Inc. ("AT&T Wireless") at 2; Comments of Airtouch Communications, Inc. ("Airtouch") at 3; Comments of Omnipoint at 2; Comments of Nextel Communications, Inc. ("Nextel") at 4; Comments of United States Cellular Corporation at 2; Comments of the Rural Telecommunications Group ("RTG") at 2; Comments of the Cellular Carriers Association of California at 2; Comments of Los Angeles Cellular Telephone Company

The California Request raises issues of immediate nationwide importance. Thus, the Commission's previous observation that "it is premature and speculative for the Commission to establish a national standard of liability protection in order to achieve rapid deployment of wireless E911 systems"<sup>9</sup> is no longer sustainable. In the absence of Federal or state immunity, carriers providing E911 services may be exposed to unlimited risk.<sup>10</sup>

The record is clear that limitation of liability is critical to carriers' business operations and commercial viability.<sup>11</sup> Risk management is especially important for small and rural carriers. Unlike many large corporations, these carriers do not have the economies of scale necessary to spread the risk associated with provisioning E911. Accordingly, the Commission should provide a national standard of liability protection for carriers complying with the E911 Federal mandate.

## II. Cost Recovery Mechanisms Should Include Insurance Premiums

The Commission's E911 requirement (Phase I) is applicable only if the administrator of the designated public safety answering point ("PSAP") has requested the services, the PSAP is capable of receiving and utilizing the data elements associated with

---

at 3; Comments of Trueposition at 2; and Comments of XYPOINT Corporation at 2.

<sup>9</sup>/ E911 Memorandum Opinion and Order at 22732.

<sup>10</sup>/ As demonstrated on the record in this proceeding, a significant number of states have not provided liability protection to wireless carriers for E911 service. See e.g., Comments of CTIA at 4; Comments of SBC at 2.

<sup>11</sup>/ The Ad Hoc Alliance for Public Access to 911, which opposes insurance cost recovery, misapprehends the function of marketplace forces in risk assessment. Where a service is mandatory, there is no opportunity for carriers to weigh the relative costs/benefits of providing service and assigning risk. See Comments of Ad Hoc Alliance for Public Access to 911 at 4. Even advocates of prompt rule implementation recognize the legitimacy of wireless carriers' efforts to ensure that they have the same liability protection as wireline carriers. See Comments of the Association of Public-Safety Communications Officials-International, Inc. at 1-2; Comments of the National Emergency Number Association at 2.

the service, and a mechanism for recovering the costs of the service is in place.<sup>12</sup> The Commission directed that the costs associated with E911 service not be charged directly to end users and provided that E911 (Phase I and Phase II) requirements shall apply only if "a mechanism for the recovery of costs relating to the provision of such services is in place."<sup>13</sup> RCA agrees with other commenters in this proceeding that, absent the adoption of a Federal limitation on liability, and where a state has declined to limit a carrier's liability through state law, the cost of insurance coverage required to provide E911 service must be included in the state's cost-recovery mechanism.<sup>14</sup> If not, wireless carriers will be required to bear the cost of exorbitant private insurance premiums to offset the risk of providing E911 services to non-subscribers. Without adequate cost recovery, carriers will be relieved of the obligation to deploy E911 services.<sup>15</sup> This result is clearly contrary to the Commission's intent in mandating the provision of these services for public safety.

### III. Conclusion

As demonstrated herein and by other commenters on the record in this proceeding, the public interest would be served by swift action by the Commission in adopting a Federal limitation on liability for carriers deploying E911 services. In the absence of Federal or state liability protection, state cost-recovery mechanisms should include

---

<sup>12</sup>/ 47 C.F.R. §20.18(f) (1997).

<sup>13</sup>/ E911 Report and Order at 18684.

<sup>14</sup>/ See, e.g., CTIA at 5; PCIA at 3; Ameritech at 4; BellSouth at 6; GTE at 5; Bell Atlantic Mobile at 3; AT&T Wireless at 3; Airtouch at 4; Omnipoint at 6; Nextel at 5; and RTG at 4.

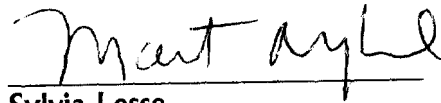
<sup>15</sup>/ See, e.g., Cellular Carriers Association of California at 4.

insurance premiums paid by such carriers. Adoption of these measures will ensure the deployment of E911 nationwide.

Respectfully submitted,

THE RURAL CELLULAR ASSOCIATION

By



Sylvia Lesse

Margaret Nyland

Its Attorneys

Kraskin, Lesse & Cosson, LLP  
2120 L Street, NW  
Suite 520  
Washington, DC 20037  
202/296-8890

August 24, 1998

## CERTIFICATE OF SERVICE

I, Shelley Bryce, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC, 20037, hereby certify that on this 24th day of August, 1998, a copy of the foregoing "Reply Comments of the Rural Cellular Association" was delivered via first class, U.S. mail, postage prepaid to the parties listed below:

  
Shelley Bryce

Dan Phythyon, Chief \*  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5002  
Washington, DC 20554

John Cimko, Chief \*  
Policy and Rules Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5202A  
Washington, DC 20554

Reuven M. Carlyle  
Vice President - External Affairs  
XYPOINT Corporation  
2825 Eastlake Avenue East, Suite 250  
Seattle, WA 98102

Peter M. Connolly  
Koteen & Naftalin  
1150 Connecticut Avenue, NW  
Washington, DC 20036  
Attorneys for United States Cellular Corporation

Douglas I. Brandon  
Vice President - External Affairs  
AT&T Wireless Services, Inc.  
1150 Connecticut Avenue, NW  
Washington, DC 20036

Howard J. Symons  
Sara F. Seidman  
Michelle M. Mundt  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo  
701 Pennsylvania Avenue, NW, Suite 900  
Washington, DC 20004  
Of Counsel for AT&T Wireless, Inc.

Jay L. Birnbaum  
Jennifer P. Brovey  
Skadden, Arps, Slate, Meagher  
& Flom LLP  
1440 New York Avenue, NW  
Washington, DC 20005  
Attorneys for Los Angeles Cellular Telephone Company

Philip L. Verveer  
David M. Don  
Willkie Farr & Gallagher  
Three Lafayette Centre  
1155 21st Street, NW, Suite 600  
Washington, DC 20036  
Attorneys for Trueposition, Inc.

Pamela J. Riley  
David A. Gross  
AirTouch Communications, Inc.  
1818 N Street, NW  
Washington, DC 20036

Joyce H. Jones  
Kim Mahoney  
AirTouch Communications, Inc.  
One California Street, 29th Floor  
San Francisco, CA 94111

Richard J. Quist, Jr.  
Betsy Stover Granger  
4420 Rosewood Drive,  
4th Floor, Building 2  
Pleasanton, CA 94588  
Attorney for SBC Wireless, Inc.

Carol L. Tacker  
17330 Preston Road, Suite 100A  
Dallas, Texas 75252  
Attorney for SBC Wireless, Inc.

Bruce Beard  
13075 Manchester Road, Suite 100  
St. Louis, MO 63131  
Attorney for SBC Wireless, Inc.

Stephen E. Carlson  
Executive Director  
The Cellular Carriers Association of  
California  
1225 Eighth Street, Suite 550  
Sacramento, CA 95814

Michael B. Day  
Jeanne M. Bennett  
Goodin, MacBride, Squeri, Schlotz  
& Ritchie, LLP  
505 Sansome Street, Suite 900  
San Francisco, CA 94111  
Attorneys for The Cellular Carriers  
Association of California

Caressa D. Bennet  
Dorothy E. Cukier  
Bennet & Bennet, PLLC  
1019 19th Street, NW, Suite 500  
Washington, DC 20036

John T. Scott, III  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
Attorneys for Bell Atlantic Mobile, Inc.

Robert S. Foosaner  
Vice President and Chief Regulatory Officer  
Lawrence R. Krevor  
Director - Government Affairs  
Laura L. Holloway  
General Attorney  
Nextel Communications, Inc.  
1450 G Street, NW, Suite 425  
Washington, DC 20005

John F. Raposa  
Attorney  
GTE Service Corporation  
600 Hidden Ridge, HQE03J27  
P.O. Box 152092  
Irving, TX 75015-2092

Gail L. Polivy  
Attorney  
GTE Service Corporation  
1850 M Street, NW, Suite 1200  
Washington, DC 20036

Mark J. O'Connor  
Piper & Marbury LLP  
1200 19th Street, NW, Suite 700  
Washington, DC 20036  
Attorney for Omnipoint  
Communications, Inc.

William B. Barfield  
Jim O. Llewellyn  
1155 Peachtree Street, NE, Suite 1800  
Atlanta, GA 30309-2641  
Attorney for BellSouth Corporation

David G. Frolio  
1133 21st Street, NW, Suite 900  
Washington, DC 20036  
Attorney for BellSouth Corporation

John Prendergast  
Susan J. Bahr  
Blooston, Mordkofsky, Jackson & Dickens  
2120 L Street, NW  
Washington, DC 20037  
Attorneys for Ameritech Mobile  
Communications, Inc.

Mary McDermott  
Senior Vice President/Chief of Staff,  
Government Relations  
Mary E. Madigan  
Vice President, External Affairs  
Todd B. Lantor  
Manager, Government Relations  
Personal Communications Industry  
Association  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314-1561

Michael Altschul  
Vice President and General Counsel  
Randall S. Coleman  
Vice President, Regulatory Policy & Law  
Lolita D. Smith  
Staff Counsel  
Cellular Telecommunications  
Industry Association  
1250 Connecticut Avenue, NW, Suite 200  
Washington, DC 20036

James R. Hobson  
Donelan, Cleary, Wood & Maser PC  
1100 New York Avenue, NW, #750  
Washington, DC 20005-3935  
Attorney for NENA

Robert M. Gurss  
Wilkes, Artis, Hedrick & Lane, Chartered  
1666 K Street, NW, #1100  
Washington, DC 20006  
Attorney for Association of Public-Safety  
Communications Officials-International, Inc.

Jim Conran  
Chairman  
AD HOC Alliance for Public Access to 911  
P.O. Box 2346  
Orinda, CA 94563

S.C. Wilkins, Chief  
Information Management Division  
California Highway Patrol  
P.O. Box 942898  
Sacramento, CA 94298-0001

\* Via Hand Delivery